

CONSUMER PROTECTION ACT OF 1971

SEPTEMBER 30, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOLIFIELD, from the Committee on Government Operations, submitted the following

REPORT

together with
ADDITIONAL VIEWS

[To accompany H.R. 10835]

The Committee on Government Operations, to whom was referred the bill (H.R. 10835) to establish an Office of Consumer Affairs in the Executive Office of the President and a Consumer Protection Agency in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 14, line 11, strike out "relating to administrative procedure".

On page 14, line 12, insert "relating to administrative procedure," immediately after the word "Code,".

On page 16, line 25, insert "required by law or by" immediately after the word "Where".

On page 17, line 1, strike out "so require".

On page 22, line 3, immediately after the word "promptly" insert, "to the greatest practicable extent within its capability,".

On page 24, lines 16 and 17, strike out "or by specific direction of the President".

On page 28, line 25, insert "or adoption" immediately after the word "issuance".

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PURPOSE AND HIGHLIGHTS

H.R. 10835 will further the protection of consumers and provide representation of consumer interests in important areas of activity of the Federal Government by creating a new independent Consumer Protection Agency, by arming the existing Office of Consumer Affairs with statutory authority and by establishing a Consumer Advisory Council.

The Office of Consumer Affairs will continue in the Executive Office of the President. Its principal functions will be to assist the President in coordinating the diverse and often overlapping consumer programs of the numerous Federal departments and agencies and to develop and make more effective such programs.

The basic role of the Consumer Protection Agency will be to represent the interests of consumers in proceedings being conducted by other Federal agencies (and in certain circumstances the courts), where such interests may be substantially affected by the results of those proceedings.

The Consumer Advisory Council will be composed mainly of private citizens who, through this mechanism, will furnish an input from the consumer himself into the activities and policy formulations of the Office and Agency.

Other provisions of the bill authorize: programs of consumer education and information; procedures for handling consumer complaints and making those complaints available to the public; a limited amount of product testing in connection with the consumer representation and safety functions and the dissemination of test results; and studies of household product safety. The bill also requires all Federal agencies in taking actions within their responsibility to give due consideration to the interests of consumers.

The bill contains provisions prohibiting the disclosure of trade secrets and other confidential information and requires fair and equitable procedures in carrying out its objectives.

EXPLANATION OF AMENDMENTS

The first two amendments are purely technical editorial amendments, to clarify the reference to chapter 5 of title 5, United States Code.

The third amendment clarifies the requirement for the Consumer Protection Agency to petition for a rehearing or reconsideration by an agency before instituting a proceeding to obtain judicial review. Such a petition is to be sought when required by law as well as by the agency's rules.

The fourth amendment is purely technical.

The fifth amendment is a technical amendment to clarify the discretion allowed other Federal agencies in scheduling and performing tests requested by the Consumer Protection Agency. Whereas other agencies which possess facilities and staff for testing are authorized and directed to perform such tests promptly, the intent of the legislation is that such agencies will assist the Agency to the greatest practicable extent within their capabilities.

The sixth amendment deletes a specific reference to Presidential powers as being unnecessary and possibly setting unwanted precedents in the withholding of information in relationships between the executive and legislative branches of the Government. Federal agencies are authorized and directed to supply information requested by the Office and Agency created by this act, except when disclosure of such information is prohibited by law. Law in this context would include an Executive order of the President. The committee decided that this was sufficient authority to regulate disclosures without further reference to Presidential authority.

The seventh amendment makes clear that the agency actions referred to will include the adoption of rules, regulations, and guidelines, as well as their issuance, since some actions of this type have in the past been adopted and used regularly, but not issued or published. The amendment is not a limiting amendment, since the section deals with "any action * * * including, but not limited to, the issuance or adoption * * *."

BACKGROUND

The Committee on Government Operations has had a continuing interest in the effective organization of consumer activities in the executive branch. In the 87th Congress, a study of "Consumer Protection Activities of the Federal Departments and Agencies" was conducted by the Subcommittee on Intergovernmental Relations under the chairmanship of Congressman L. H. Fountain which resulted in House Report 87-1241. It provided the most complete review to that date of the various consumer activities of the Federal Government. This was followed in the 88th Congress by two reports from the same subcommittee on "Consumer Protection Activities of State Governments"—House Reports 88-445 and 88-921.

In the 89th Congress, Congressman Benjamin S. Rosenthal introduced H.R. 7179, to establish a Department of Consumers, and indepth hearings were held by the Subcommittee on Executive and Legislative Reorganization, laying the groundwork for later legislation.

In the 90th Congress, the late Chairman William L. Dawson convened a special inquiry on consumer representation in the Federal Government, which held extensive hearings on "Consumer Informa-

tion Responsibilities of the Federal Government" in 1967, and on "Government-Rejected Consumer Items" in 1968. The latter resulted in House Report 91-733, dated December 19, 1969. An investigation also was made of consumer problems of the poor which resulted in House Report 90-1851, dated August 7, 1968.

These and other studies over the years help convince this committee that much is lacking in the organization of the Government's activities on behalf of consumers and that reorganization and revitalization are needed.

In the 91st Congress, after extensive hearings on the subject, this committee reported to the House H.R. 18214, titled the "Consumer Protection Act of 1970," by a vote of 31 to 4. That bill, an antecedent of the pending legislation, similarly created an Office of Consumer Affairs in the Executive Office of the President and a Consumer Protection Agency. The measure, however, did not obtain a rule to permit floor consideration. A related measure (S. 4459) passed the Senate near the close of the second session of the 91st Congress by a vote of 74-4.

In the present Congress, Chairman Holifield introduced H.R. 16, the Consumer Protection Act of 1971. Identical bills were cosponsored by Representatives Florence P. Dwyer, Benjamin S. Rosenthal and 160 other Members of the House. This bill was similar to the committee measure of the last Congress except that it contained 13 amendments previously agreed upon by most members of the committee. After hearings and executive consideration by the Subcommittee on Legislation and Military Operations, also chaired by Representative Holifield, the subcommittee agreed upon a clean bill, H.R. 10835, which was cosponsored by the following Members: Mr. Holifield, Mrs. Dwyer, Mr. Garmatz, Mr. Horton, Mr. Rosenthal, Mr. Wydler, Mr. Wright, Mr. Brown of Ohio, Mr. St Germain, Mr. Fuqua, and Mr. Moorhead. This bill was reported with amendments by the full committee by a vote of 24 ayes, 4 noes, and 3 voting present.

HEARINGS

The Subcommittee on Legislation and Military Operations held hearings¹ on H.R. 16, predecessor of the pending bill. The importance of the legislation to the consumers of the Nation and its innovative character caused the subcommittee to fully explore its contents and scope. This was deemed necessary and beneficial even though extensive hearings were held in the previous Congress.

Witnesses included spokesmen for the Consumers Union and the Consumer Federation of America.

Representatives from industry and business appeared, namely: National Association of Food Chains, Gas Appliance Manufacturers Association, Electronic Industries Association, American Retail Federation, Association of Home Appliance Manufacturers, Chamber of Commerce of the United States, American Advertising Federation, National Association of Manufacturers, and Giant Food, Inc.

Also heard were officials of the American Federation of Labor and Congress of Industrial Organizations.

¹ "Consumer Protection Legislation," Hearings before the Subcommittee on Legislation and Military Operations of the House Committee on Government Operations on H.R. 16 and related bills, H.R. 3809 and related bills, and H.R. 254 and H.R. 1015, Apr. 27, 28; May 6, 24; and July 12, 1971.

Federal officials who testified were the Special Assistant to the President for Consumer Affairs, the Assistant Director of the Office of Management and Budget, the Chief of the Consumer Affairs Section of the Department of Justice, the Chairman of the Federal Trade Commission and the Chairman of the Administrative Conference of the United States.

Persons representing a variety of other interests also were heard.

The committee is satisfied that the breadth of information developed in the 1971 hearings, supported by the 1969² and 1970³ hearings, provide sufficient basis for action by the House on this measure.

NEED FOR COORDINATION AND REPRESENTATION

The evidence presented to this committee from a multitude of sources makes it abundantly clear that the present organization of activities in the Federal Government on behalf of the consumer is inadequate. President Nixon himself has said "* * * Many of the Government's efforts to help the consumer are still geared to the problems of past decades; when it is able to act at all, Government too often acts too slowly."

Ten years ago we reported that there were more than 100 activities carried out by 33 Federal departments and agencies which affected consumer interests. These have increased since then as additional laws have been passed.⁴ There are today hundreds of such activities spread throughout the Federal establishment. Some examples of the proliferation are: Responsibility for enforcing the Truth-in-Lending Act is vested in nine separate agencies; administration of the Fair Packaging and Labeling Act is divided among three agencies—The Federal Trade Commission, the Food and Drug Administration, and the Department of Commerce; no less than five Federal agencies are responsible for consumer protection of the poor; Flammable Fabrics Act jurisdiction is shared by the Department of Commerce, the Federal Trade Commission, and the Food and Drug Administration; responsibility for the wholesomeness of fish and fishery products falls both to the Food and Drug Administration and the Interior Department's Bureau of Commercial Fisheries.

² "Organizing Federal Consumer Activities," hearings before the Subcommittee on Executive and Legislative Reorganization of the House Committee on Government Operations on H.R. 6037 and related bills, Sept. 16, 17, 18; Nov. 13, and 14, 1969.

³ "Organizing Federal Consumer Activities (pt. 2)," hearings before the Subcommittee on Executive and Legislative Reorganization of the House Committee on Government Operations on H.R. 6037 (revised) and related bills, Apr. 13 and 17, 1970.

⁴ Departments and agencies that conduct one or more consumer programs are:

Administration on Aging.	Interior Department.
Agricultural Research Service.	Interstate Commerce Commission.
Bureau of Federal Credit Unions.	Justice Department.
Bureau of Labor Statistics.	National Bureau of Standards.
Civil Aeronautics Board.	National Commission on Product Safety.
Consumer and Marketing Service.	National Commission on Consumer Finance.
Defense Department.	National Highway Safety Bureau.
Environmental Control Administration.	National Transportation Safety Board.
Federal Aviation Administration.	Office of Consumer Services.
Federal Communications Commission.	Office of Economic Opportunity.
Federal Deposit Insurance Corporation.	Office of Education.
Federal Extension Service.	Office of Renewal and Housing Assistance.
Federal Home Loan Bank Board.	Post Office Department.
Federal Housing Administration.	President's Committee on Consumer Interests.
Federal Power Commission.	Public Health Service.
Federal Reserve Board.	Securities and Exchange Commission.
Federal Trade Commission.	Transportation Department.
Food and Drug Administration.	Treasury Department.
General Services Administration.	Veterans' Administration.
Government Printing Office.	

This abundance of activity, however, has not proved adequate for the protection of the consumer. Some of the more important consumer-oriented agencies have been criticized severely because of their failure to carry out the responsibilities imposed on them by the Congress. One of these is the Federal Trade Commission, part of whose mission is to protect the public from unfair or deceptive acts or practices in commerce, false advertising, and certain potentially dangerous products. A commission of the American Bar Association, created at the suggestion of President Nixon to appraise the efforts of the FTC in the field of consumer protection, said in its report of September 15, 1969: "Through lack of effective direction, the FTC has failed to establish goals and priorities, to provide necessary guidance to its staff, and to manage the flow of its work in an efficient and expeditious manner." It concluded that both the volume and the force of FTC law enforcement declined during the past decade. More recently, the FTC has manifested a renewed interest and activity in consumer affairs, possibly because of the public criticism and its apparent desire to play a more important role in consumer protection.

A 1969 internal study of the Food and Drug Administration, another key agency in the protection of consumers, concluded that, "The Federal Government is doing a grossly inadequate job of protecting consumers from dangerous drugs, contaminated foods, and other hazardous products." Reports issued by the Subcommittee on Intergovernmental Relations of this committee have noted grave deficiencies in the operations of FDA which need attention and correction.

The final report of the National Commission on Product Safety stated that, "the processes of Government share the onus for our lagging product safety efforts." In a special report prepared for the same Commission, the Heffron task force was critical of a number of Federal agencies which have responsibility for product safety. "One consequence of these conditions," it said, "has been a widespread deception. Contrary to broad public expectations, urgent problems of product safety are not being handled. If these conditions persist, the agencies will serve mainly to insulate resistant industry from legitimate public demands for safer consumer products."

During our hearings, witness after witness detailed similar complaints about the effectiveness of the existing agencies. Witnesses were hard put to name agencies that were performing their consumer responsibilities adequately. Likewise, the fragmentation of these activities in small organizational units often resulted in a loss of focus and commitment on the part of those responsible.

It is, therefore, necessary that new force within the Government be generated to provide coordination and representation and to make certain that the interests and needs of consumers are being fully met. This need seems universally recognized by the President, Members of Congress, many agency officials, and members of the consumer and business communities.

NEW STATUTORY AGENCIES

The organizational rationale of this legislation is to recognize by statute certain types of organizations previously created by Presidential direction and to create a new innovative agency to promote and defend consumer interests.

The Office, at the Presidential level, embracing most of the functions of the present Office of Consumer Affairs, would serve as the President's advisory unit and coordinating arm for consumer affairs, and would reach broadly across the Government. An advantage of giving statutory underpinning to this Office is that its Director becomes more accessible to the Congress and its activities more amenable to congressional supervision than obtains in the case of a nonstatutory office at the Presidential level.

The Council, representing outside consumer, producer, and public interests, would bring fresh ideas and viewpoints to the Government environment for consumer protection. It would also provide, as mentioned elsewhere in this report, a measure of continuity through fixed, staggered terms, so that cumulative experience from outside Government could be brought to bear, even as directors and administrations change.

The Agency would be the action unit for the advocacy and advancement of consumer interests before the many agencies of Government involved in one way or another in consumer affairs. Additionally, it would have important responsibilities in gathering and disseminating information on consumer affairs, in handling consumer complaints, and in other matters prescribed in the legislation.

The three statutory agencies, each designed with a distinctive role and outlook or orientation, but all committed to the concerns of the consumer, would be expected to work cooperatively and in ways to avoid unnecessary duplication. Together they should help to provide the kind of protection which consumers demand and deserve in this age of material abundance, technological change, and industrial ingenuity in the production and supply of goods and services.

The committee believes that there is a strong justification for each of the aforementioned statutory agencies. Although the Office would carry the prestige and influence of the President's office in advancing consumer welfare, the director of the Office cannot serve effectively as an advocate before other Federal agencies. Such advocacy would raise questions of Presidential interference in the processes and the decisions of the independent regulatory agencies. The Consumer Protection Agency, established as an independent agency in the executive branch, would be in a better position to perform the advocacy function. It is not intended to give the Office any supervisory or other authority over the Agency.

The coordinating role of the Office and the advocacy and informational roles of the Agency are designed to improve and energize Government performance rather than to replace or duplicate existing governmental functions. In line with this concept, the Office and the Agency will depend on other Government agencies for much of the information they need, for testing facilities to the extent that testing is authorized in the legislation, and for other support and assistance.

In order that the Agency and the Office may be enabled to carry out their missions in the most effective manner, other Federal departments and agencies are authorized and directed to assist them by making services, facilities, and personnel available to the greatest extent practicable within their capability. Such assistance would be conditioned on existing law and the terms of governing appropriations.

We are conscious of the need to assure fairness and equity in the operation of the Consumer Protection Agency created by this bill as

in all agencies of Government and have required it to follow procedures laid down by the Administrative Procedure Act in making its rules. Similarly, opportunity is afforded for comment prior to release on test data where products are named.

REPRESENTATION OF CONSUMERS

While the Consumer Protection Agency is given very important functions with respect to gathering and disseminating information, handling of complaints, and consumer safety, the authority given the Agency to represent the interests of consumers in proceedings before other Federal agencies and in court is often termed the heart of the legislation. This authority is contained in section 204, which has been both the most controversial section of the bill and the one most subject to misinterpretation.

The concept that one Federal agency shall, as a matter of right, have the authority to participate and intervene in the proceedings of all other Federal agencies and in many cases secure judicial review of the Federal agency decisions, is both new and unusual. The bill ties the exercise of this authority by the new Agency to the long-established and well-developed provisions of the Administrative Procedure Act (5 U.S.C. 551, et seq.), which was enacted in 1946 and which has governed agency proceedings since that date.

Consequently, section 204 must be read in the light of the terms and definitions of the Administrative Procedure Act. Since these terms and definitions are rather technical in nature and may not be well understood by persons unfamiliar with the details of the act, some misunderstandings have arisen regarding the true scope of section 204. The following explanation sets forth the committee's understanding of this scope.

Basic definitions

The complete universe of agency proceedings under the Administrative Procedure Act is encompassed in the two terms "rulemaking" and "adjudication". "Rulemaking" is defined as the agency process for formulating, amending, or repealing a rule; "rule" under the act means an agency statement of general or particular applicability and future effect to implement or prescribe law or policy, or describe agency procedure or practice, and includes prescription, inter alia, of rates, prices, facilities, appliances, services, and accounting; "adjudication" is defined as the agency process for the formulation of an order, and an "order" is defined as the whole or a part of a final disposition by the agency in a matter other than rulemaking. Licensing is specifically included within the definition of adjudication. It is obvious that "rulemaking" and proceedings leading to the disposition of "a matter other than rulemaking" must include all agency proceedings under the Administrative Procedure Act.

Participation in Federal agency rulemaking

The Agency may participate in any rulemaking proceeding other than one involving solely the internal operations of a Federal agency. This section (204(a)(1)) is not a significant departure from existing procedures, since any interested person usually may be heard in a rulemaking proceeding. The phrase "any rulemaking proceeding" is designed to allow the advocate to appear in a wide range of such

proceedings if the consumer interests are substantially affected and may not otherwise be adequately protected.

The exception of "internal operations" refers to such matters as those involving the internal management of the Federal agencies, the routing of papers, the assignment of duties, and the internal delegations of authority. It should be noted that while the Consumer Protection Agency may not participate "as a matter of right" in the formulation of rules governing internal operations, it may, when it believes the interests of consumers are involved, communicate with the Federal agency regarding the problems of consumers and the interests of consumers caused by the internal operations of the agency (sec. 204(i)) and may request the agency to make changes (sec. 204(e)). Other provisions of the bill also require Federal agencies to keep the Consumer Protection Agency fully informed on all phases of their activities if the Agency so requests.

As discussed later, the Agency has broad authority to intervene in or seek judicial review of Federal agency rulemaking proceedings and of the rules issued thereunder.

Intervention in Federal agency adjudications

Section 204(a)(2) of H.R. 10835 allows the Consumer Protection Agency to intervene as a party in agency adjudications without any reference to the degree of formality under which those adjudications are carried out. Adjudications are defined in the Administrative Procedure Act as agency proceedings, other than rulemaking, for the final disposition of a matter. Hence, the bill allows the Agency to intervene in a wide range of Federal agency proceedings so long as they fall under the definition of adjudications in the Administrative Procedure Act.

In sections subsequent to the definition section, and particularly in 5 U.S.C. 554, the Administrative Procedure Act further distinguishes between two types of adjudications. The first type is that which is required by statute (or, the courts have decided, by constitutional due process) to be determined on the record after opportunity for agency hearing. In his 1948 manual on the Administrative Procedure Act, the Attorney General at page 40 called this "formal administrative adjudication." The act specifically makes sections 554, 556 and 557 applicable to this type of adjudication.

The second type of adjudication is that in which there is no statutory requirement for a decision on the record after an agency hearing. There are, of course, a great number of agency proceedings leading to final dispositions of matters in which hearings are not required by statute or by constitutional due process, and these are sometimes called informal proceedings. While these adjudicatory proceedings are not subject to the requirements of sections 554, 556 and 557 of title 5, United States Code, they are, nevertheless, within the definition of "adjudication" in section 551 and are subject to other provisions of the act. For example, the provisions of section 555 apply to all adjudications whether or not they are under laws having a statutory requirement for hearing. Section 555 deals with such things as the opportunity for formal appearances, limitations and rules regarding subpoenas and other discovery processes, and prompt notices of denials. Section 558 governing and limiting the use of sanctions and powers also applies to all adjudications as do the judicial review provisions, now found in sections 701-706 of title 5, United States Code.

It should be noted that section 204 of H.R. 10835 applies to all adjudicatory proceedings under the act and is not limited to the first type of adjudications. The second type of adjudications is clearly within the definitions of the Administrative Procedure Act. Since some of the provisions of the act apply to them, such adjudicatory proceedings affecting the interests of consumers would fall within section 204(a) of H.R. 10835. These would include, for example, proceedings leading to a Federal Trade Commission consent decree, informal proceedings which could lead to an order revoking a motor carrier's license, and many other so-called informal proceedings.

Fine, penalty, or forfeiture cases

Section 204(a) of H.R. 10835 provides that the Consumer Protection Agency may *not intervene as a party* in Federal agency proceedings which seek primarily to impose a fine, penalty or forfeiture for the violation of a statute or any rule, order or decree promulgated under a statute.

The words "fine, penalty or forfeiture" refer to quasi-criminal type punishments and proceedings. These words are much narrower than the word "sanction" in the Administrative Procedure Act. A "fine" is legally defined as, "a sum of money exacted of a person guilty of an offense as pecuniary punishment"; "penalty" is defined legally as "the consequences visited by law upon the heads of those who violate the law, particularly provisions of the criminal law and police regulations. A punishment for the nonperformance of an act or for the performance of an unlawful act, the character of the imposition not being changed by the manner in which it is inflicted, whether by civil action or criminal prosecution"; and "forfeiture" is legally defined as "a word often used as a synonym of 'penalty' but which is, precisely a divestiture of property without compensation, in consequence of a default or an offense." A divestiture, in turn, means the loss of a right or title, and consequently a forfeiture involves the loss of the right or title to property.⁵ The word "primarily" is used to indicate that the principal or basic purpose of a proceeding must be to levy a fine, penalty or forfeiture to bring it within the exception. If another purpose or the total of other purposes is of equal significance, the exception would not apply.

Even in proceedings primarily involving fines, penalties, or forfeitures, the Agency is specifically authorized to present evidence and views before agencies and courts as an *amicus curiae*.

Investigatory and informal proceedings

Many agency investigatory proceedings, whether formal or informal, do not lead to a final disposition of a matter, but rather to a decision as to whether to proceed in a more formal adjudication proceeding or, for example, to publicity such as a Surgeon General's warning against health hazards, or to proposed rules or even to proposed legislation. This was pointed out by the Attorney General on page 40 of his 1948 manual where he states, "Investigatory proceedings, no matter how formal, which do not lead to the issuance of an order containing the element of final disposition as required by the definition do not constitute adjudication." Of course, if an investigatory proceeding or an "informal" proceeding is of the type that does lead to the issuance

⁵ Nonstatutory legal definitions used in this discussion are from Ballentine's Law Dictionary, 3d ed.

of an "order", it is encompassed within the definition of "adjudication" and the Consumer Protection Agency would be authorized to intervene as a party.

Nevertheless, the Agency will have broad authority to participate in agency investigations. Under its general authority to secure any information it requires from Federal agencies (sec. 202(c)(2)) and its specific authority to require Federal agencies to notify it of actions (sec. 302(1)), the Consumer Protection Agency can require agencies to notify it of the commencement and progress of investigatory proceedings, of proposed conferences and even of proposed settlements.

In addition, the Consumer Protection Agency has very broad authority to communicate with Federal agencies (sec. 204(i)). Such communication could include the transmittal of any evidence or other information the Agency wishes to send, as well as its comments and suggestions on proposed settlements and other arrangements. If the suggestions and recommendations of the Agency are not carried out, it may give full publicity to the situation and may request the Federal agency involved to initiate proceedings or to take other actions as may be authorized by law. If the Federal agency fails to take the action requested, it is required to notify the Consumer Protection Agency of the reasons for its failure and to make such notification a matter of public record (sec. 204(e)).

Consequently, it is clear that while the Consumer Protection Agency may not "intervene as a party" in all Federal agency investigations, it can secure the information it requests and express its views and recommendations fully.

Judicial review and representation in Federal courts

Section 204(d) provides that where the Agency participated in a rulemaking proceeding or intervened in an adjudicatory proceeding before a Federal agency, it may intervene as a party in any judicial proceeding in a Federal court involving a review of the Federal agency action. In this situation it may also initiate a proceeding before a Federal court to secure judicial review to the extent that the laws generally applicable provide for and govern such judicial review.

If the Agency was entitled to, but did not, participate in the rulemaking proceeding or intervene in the adjudicatory proceeding which led to a Federal agency action, it may, nevertheless, secure judicial review or intervene in a judicial proceeding reviewing the action if the Federal court finds (1) the agency action may adversely affect consumers; and (2) the interests of consumers are not otherwise adequately represented. The committee's purpose in allowing the Consumer Protection Agency to seek judicial review in connection with Federal agency proceedings in which it did not appear as a party is to avoid a situation in which the Agency might make pro forma interventions in a tremendous number of cases merely to avoid being foreclosed from seeking judicial review if the outcome is adverse to the interest of consumers.

If required by law or the rules of practice of the Federal agency involved, the Consumer Protection Agency is required to petition the Federal agency for rehearing or reconsideration of an action before instituting a judicial review proceeding. The committee believes that this requirement should not and will not be used as a delaying tactic by Federal agencies, and that the Federal agencies will act upon such petitions in a timely manner.

The Agency is also authorized to appear as *amicus curiae* in any Federal court action in which the United States or a Federal agency is a party if the Agency believes the action may substantially affect the interests of consumers.

Appearances by the Consumer Protection Agency before other Federal agencies and before Federal courts are to be in the name of the Consumer Protection Agency itself and are to be made by "qualified representatives" designated by the Administrator. This is intended to require that persons representing the Agency meet the qualification requirements of the agencies and the courts before which they are appearing. It would, of course, include the opportunity to petition to be allowed to appear in specific proceedings and cases.

Subpena and discovery process

H.R. 10835 does not give the Consumer Protection Agency a right to issue its own subpoenas or to establish its own discovery processes. However, when the Agency has actually intervened in a Federal agency proceeding as a party, it is then authorized to secure subpoenas and to use the Federal agency discovery processes in connection with the ongoing proceeding. Federal agencies are required to issue the requested subpoenas if they are for relevant evidence and are reasonable in scope. The Administrative Procedure Act generally requires Federal agencies to issue subpoenas on behalf of parties to proceedings under these circumstances.

State and local agency proceedings

Subsection 204(h) provides that the Consumer Protection Agency is not authorized "to intervene" in proceedings or actions before State or local agencies and courts. Other provisions of section 204 make it clear that the word "intervene" is used in subsection (h) in the same technical legal sense that it is used elsewhere in section 204; that is, as a "proceeding by which one not originally a party to an action is permitted, on his own application, to appear therein and join one of the original parties in maintaining the action or defense, or to assert a claim or defense against some or all of the parties to the action as originally instituted." Consequently, the Agency is not prohibited from appearing and participating as *amicus curiae* before State and local agencies or from communicating with them in other legally proper ways.

Authority to communicate

Subsection 204(i) states that nothing in section 204 shall be construed to prohibit the Consumer Protection Agency from "communicating" with Federal, State, or local agencies at times and in manners not inconsistent with law or agency rules. As used in this subsection the word "communicate" has a very broad meaning; that is, to impart all types of information including information in the way of facts, views, and recommendations, either in written form or orally.

Two limitations apply, however. A communication to a State or local agency may not be made by means of intervening as a party in a proceeding before the State or local agency (sec. 204(h)), and the communication must be at times and in manners not inconsistent with law or with the applicable Federal, State, or local agency rules. The latter limitation would prevent the Consumer Protection Agency from making improper *ex parte* communications and representations

to an agency or court and would require it to follow applicable provisions of law and agency rules governing such matters as service of copies, presentation of oral testimony at open hearings, filing statements in a timely manner, and the orderly conduct of proceedings.

ACQUIRING AND DISSEMINATING INFORMATION

The performance of the Consumer Protection Agency and the Office of Consumer Affairs is directly dependent upon their access to and dissemination of current and timely information. Unless these organizations are able to keep themselves fully abreast of developments in the ever-changing marketplace, they cannot hope to determine adequately the problems confronting consumers. Similarly, unless they are continuously apprised of important activity in the other Federal agencies, the Office and the Agency will not be able to carry out their mandate of assuring that agency proceedings give due consideration to the needs of consumers. Further, the Agency would be handicapped in its ability to represent the interests of consumers in agency proceedings or to request that proceedings be initiated in furtherance of consumer interests.

An inflow of information is also required if the Consumer Protection Agency is to perform its function of disseminating information to consumers. This educational function is very important, for prompt warning of deceptive and fraudulent practices or dangerous products would serve to alert consumers and should reduce the need for later time-consuming litigation or agency action to rectify the situation.

The legislation provides for channels of information directly from the consumer to both the Agency and the Office in the form of consumer complaints. These should be a primary source of data, providing information on all aspects of goods and services which need governmental attention.

The Agency and the Office also are empowered to acquire information on their own. They can conduct conferences, surveys and investigations concerning the needs, interests, and problems of consumers, providing that these information-gathering activities do not duplicate in significant degree similar activities of other Federal agencies.

Another way in which the Consumer Protection Agency can acquire information is through other Federal agencies. Existing agencies are authorized and directed to furnish the Agency with information and to allow access to information in their possession which the Administrator determines to be necessary for the performance of Agency functions. This ability to obtain information from any Federal agency, with the safeguards discussed below, provides the Agency with an effective mechanism to assure that the consumer's view is considered in all significant Agency actions. Through it, the Administrator can assure himself that he is apprised of all agency actions important to consumers.

Combining the information received and developed through public complaints, the Agency's own efforts, and from other Federal agencies should result in the Agency's possessing a range and depth of information which will lead to unparalleled knowledge of developments affecting the consumer. This knowledge will provide the firmest kind of foundation on which to base its representational efforts in behalf of the consumer.

SAFEGUARDS ON DISCLOSURE OF INFORMATION

The bill links important safeguards to the powers it grants for acquiring and disseminating information. The variety of consumer interests, the numerous sources or recipients of information, and the Agency's and the Office's mandate to gather information and to present it to the public required consideration of four types of questions about limitations on availability or disclosure:

1. What types of information should not be disclosed to the public because it is classified for national security, incorporates trade secrets and confidential financial information, or involves other restrictive factors?

2. What types of information should be withheld from the public temporarily until certain conditions relating to accuracy, fairness, or privacy are met?

3. What types of information should be denied to the Office and the Agency by other Federal agencies because of legal or policy considerations?

4. What types of information should be subject to denial to the Agency by business or other non-Federal sources? That is, to what extent should the Agency have the power to compel firms or other persons to produce testimony, documents, and other closely-held information?

The bill would resolve the first question by barring outright the release of information that would reveal trade secrets and confidential commercial or financial information. Of course, information whose release was otherwise prohibited by law would still remain barred from disclosure.

In addition, release of information would be limited by the exemptions from public availability set out in 5 U.S.C., sec. 552(b) (the "Freedom of Information Act" amendment to the Administrative Procedure Act).

The second question has been met in several provisions of the bill. Consumer complaints may not be made public at all if unsigned or if the complainant requests confidentiality.

In any event, placing a complaint in the public file must be held in abeyance until the person complained against and also the affected Federal agency have had 60 days in which to include their own comments. Similarly, release of test data containing products names may be made only after notice and opportunity to comment is given to interested persons. Information and data on consumer products must be checked for accuracy before being released.

With the respect to the third problem involving cross-agency information, the bill contains a declaration that nothing in the Act should be deemed to require releasing to any instrumentality created under the act information which the law prohibits from disclosure. Since, as explained in connection with one of the committee amendments, an Executive order would be included in the term "law," the President would be in a position to regulate these sensitive relationships in the context and spirit of the new legislation. The committee believes this is a practical solution to the difficult problem of when one Government agency shall withhold information from another.

The fourth question, relating to the availability of subpoena power to the Agency, has been settled by withholding from it the direct

power of subpoena, but giving it a right to obtain process like that available to any other party when the Agency is participating in proceedings of a Federal agency.

HANDLING CONSUMER COMPLAINTS

A significant function to be exercised by the Consumer Protection Agency will involve the handling of complaints from the public. It is our view that there should be a central place in Government where consumers can report their dissatisfaction and have the expectation that something will be done. Of course, not every individual complaint can or should lead to a formal investigation, but every complaint should be examined, placed in its proper category, and followed through within the capability of the Agency staff to do so. Complaints should become a valuable resource for consumer intelligence and understanding of the relationships between vendors and purchasers generally.

Not all unfair practices of the marketplace are violations of law, but in recent years many such practices have been outlawed. When complaints reveal a pattern of conduct that should be outlawed, or at least made subject to regulation, we expect the Agency to make appropriate recommendations for legislation. When a complaint does suggest a violation of law, the Agency may make its own investigation or immediately transmit the complaint to the Federal agency administering that law. At the same time the Agency must promptly notify the business concern or producer against whom the complaint may have been filed.

The committee anticipates that the Office of Consumer Affairs will (as at present) also receive a substantial number of complaints in addition to those received by the Agency. Those complaints are to be made available to the public by the Agency to the same extent that it makes available those it receives. Consequently, it is expected that the two agencies will work out a simple procedure for centralizing this function.

Complaints received by the Agency and the Office will be made available for public inspection in a document room to be maintained by the Agency under conditions specified in the bill. Imported as well as domestic products are subject to this process. The complaint must be signed; the person making the complaint has not requested that it, or his name, be held confidential; the party complained against has been notified of the complaint and has had 60 days to comment and such comment when received is displayed with the complaint; and the entity to which the complaint has been referred has had 60 days to notify the Agency concerning what action, if any, it intends to take on the complaint. The committee considers these conditions to be only reasonable and fair.

Although the legislation outlines in broad terms the procedures for handling complaints, specific details will be determined after a rule-making process by the Administrator. In this fashion, issues such as the precise method of preserving the confidentiality of complaints can be resolved. Further, the Agency would be expected to adopt regulations assuring care and judgment in the review of complaints, as well as appropriate handling of obscene, incomprehensible, and obviously

frivolous complaints. The "up-to-date listing of complaints" means that complaints are to be kept current both by including the latest information and by the removal of old or obsolete information.

TESTING AND RESEARCH FUNCTIONS

In performing its functions, the Consumer Protection Agency is directed to—

Encourage and support, through both public and private entities, the development and application of techniques for testing materials and processes and for the improvement of consumer products and services;

Recommend to other Federal agencies the kinds of research, analyses and other information which would be useful and beneficial to consumers;

Investigate and report to the Congress on the usefulness of a National Consumer Information Foundation to encourage voluntary tagging of consumer products, sold at retail, with basic information on performance, safety, durability, and care;

Call upon other Federal agencies to make tests of consumer products and services, under prescribed limitations; and

Make continuing studies of measures employed to protect the consumers against unreasonable risk of injuries which may be caused by hazardous household products.

It is not the intent of the act to make the Consumer Protection Agency a giant laboratory for testing products and services available in the marketplace. It may promote and encourage testing by others, but its own testing functions are to be performed in connection with participation or intervention in agency proceedings, as outlined above, and in pursuance of studies of hazardous household products.

The act also spells out that the Agency is not to declare one product to be better, or a better buy, than any other product. In disseminating information which discloses product names, the Agency is to make clear that there is no intent to imply that products tested were superior to those which were not selected for testing. Further, if the Agency learns of new information which would affect the fairness of information previously distributed, it shall promptly disseminate the new information.

CONSUMER SAFETY AND HOUSEHOLD PRODUCTS

A vital consumer need is protection of family members from injury caused by unreasonably hazardous products. Present law affords protection in a number of areas, such as food, drugs and cosmetics, toys, and flammable fabrics. The National Commission on Product Safety identified, however, a number of product categories causing frequent injuries and concluded that approximately 350 categories were largely unregulated.

The Consumer Protection Agency can provide a valuable service, pending the establishment of a full-fledged regulatory effort, by conducting studies and investigations of the scope and adequacy of the protection given consumers against unreasonable risk of injury from hazardous household products. Such an effort would involve identifying products, other than those already regulated, which may present an unreasonable hazard to health and safety and assessing the effec-

tiveness of protection provided by industry self-regulation. In the exercise of this function, the Agency is empowered to disseminate the results of tests made of the safety of household products.

Some categories of household products are already subject to Federal regulation and others may be under active study by the Bureau of Consumer Protection in the Department of Health, Education, and Welfare or other existing agencies. Consequently, the legislation provides that studies by the Consumer Protection Agency in this field should not duplicate to any significant degree similar activities conducted by other Federal agencies.

GOVERNMENT-WIDE CONCERN FOR THE CONSUMER

A novel and important feature of the legislation is that, for the first time, it would place an obligation upon every agency of the Government to give due consideration to consumer interests in administering their laws and programs. Nearly every agency engages in some activity that has an impact on the consuming public. The committee expects that this new obligation will sharpen the awareness of consumer concerns and make agencies more sensitive to these concerns. The lack of such awareness and sensitivity is the basic reason why a consumer protection act is necessary.

The bill seeks to further agency awareness of consumer needs throughout the Government by requiring agencies to notify the Office and Agency of actions at such time as the notice of the action is given to the public or when notification is requested by them. It also requires the Federal agency taking the action under certain circumstances to indicate in a public announcement the consideration given to the interests of consumers.

The committee anticipates that the Federal agencies in acting under this legislation will give substantial consideration to the interests of consumers and that their statements and announcements on this subject will be in some detail and not just repeat pro forma wording or boiler plate.

THE CONSUMER ADVISORY COUNCIL

In addition to creating the Consumer Protection Agency and providing a statutory base for the Office of Consumer Affairs, the legislation also creates a Consumer Advisory Council. The Council would be composed of 15 members, appointed by the President for staggered 5-year terms, on the basis of their knowledge and experience in consumer affairs.

Through the Council, the experience and knowledge of these individuals outside the Government will be directly accessible to the heads of the Office and the Agency. The Council is to advise the Administrator and the Director on a wide range of matters relating to consumer interests. Significantly, this includes advice on how the Government can perform its job better. The Council is to advise on ways in which the Agency and Office can be improved, how existing laws are being administered and whether new ones are needed, how well consumer programs are coordinated among Federal, State, and local agencies and private enterprise, and how well Federal agencies are considering consumer interests and whether consumer protection functions within the Government require reorganization. Addition-

ally, the Council will assess and render advice on particular aspects of consumer protection, such as the availability of information to consumers and the attention devoted to consumer problems of the poor.

The private sector has been a dynamic force in consumer protection, and the Consumer Advisory Council assures that representative individuals will continue to play an important role by infusing new ideas and different viewpoints. In addition, the staggered 5-year terms insure continuity in membership on the Council, which in turn should assist in minimizing any effects caused by changes in high-level personnel in the Office and the Agency as a result of changes in administrations.

SUMMARY AND CONCLUSIONS

H.R. 10835, the Consumer Protection Act of 1971, culminates several years of legislative development. Alternative concepts regarding the appropriate organization and the powers and duties of a consumer agency were carefully considered. The new bill, drawing upon a rich source of hearings, background material, and innovative proposals for an active Government role in consumer protection, is, in our considered judgment, a sound, fair, and workable bill. We rejected amendments having the potential to create a superagency with unlimited powers to override other Government agency considerations; we also rejected amendments which could result only in making the consumer agency weak and ineffective.

The organizational plan provided in the bill recognizes the need for (1) coordination, at the Presidential level, of the varied consumer-oriented activities of numerous Federal agencies; (2) the infusion of new ideas and fresh viewpoints from experienced lay persons serving in an advisory capacity; and (3) a new independent agency to become the governmental pivot of consumer concerns, a central place for the lodging of consumer complaints, and a strong advocate of consumer interests and rights. The Office of Consumer Affairs, the Consumer Advisory Council, and the Consumer Protection Agency, respectively, are the statutory instruments provided in the bill to fulfill these needs.

The Consumer Protection Agency is the core of the bill. It has the vital role of advocacy. The new Agency would represent consumer interests in other Government agency proceedings and be able to obtain judicial review of agency decisions considered adverse to consumer interests. To insure procedural fairness and conformance with established administrative procedures and practices, this representational role of the new Agency is placed within the framework of the Administrative Procedure Act.

The Consumer Protection Agency would not be limited to participation in agency proceedings. It would be able to communicate with Federal, State, and local agencies on any matter of consumer interest, alert Federal agencies to consumer problems, require such agencies to keep it advised on activities affecting consumer interests, and obtain information and assistance from them. The energizing or catalytic role of the Consumer Protection Agency will be one of its distinctive contributions to better Government performance in behalf of consumers.

Another key role of the Consumer Protection Agency is to receive and publicize consumer complaints. The bill contains safeguards

pointed toward the responsible handling of complaints, with opportunity for the business parties and the Government agencies involved to submit their comments on specific complaints. The complaints, with comments received and notes of action taken, would be posted in a public document room to be maintained by the new Agency.

The new Agency also would have broad responsibilities to advance the knowledge and understanding of consumer needs and interests by conducting or supporting research, investigations, and surveys and disseminating the results, and by promoting the development and application of new testing methods and techniques. A special provision is made in the bill for continuing study and investigation of hazardous household products and the adequacy of protective measures.

Testing and research are related to the new Agency's responsibilities for representing consumers before other Federal agencies, and for conducting the above-mentioned studies of hazardous household products. It is not the purpose of the Agency to test and rate specific products for consumers or to maintain its own testing facilities. Other Government agencies with specialized testing facilities and personnel will provide support.

The bill seeks to avoid unnecessary duplication by (1) carefully delineating responsibilities and relationships between the Office of Consumer Affairs and the Consumer Protection Agency; (2) giving the new Agency authority to utilize the resources of other Federal agencies; and (3) requiring that the new Agency refrain from making the same kind of studies and investigations that other agencies are undertaking.

Finally, the terms "consumer" and "interests of consumers," among others, have been defined so as to make the terms meaningful and the work of the new Agency manageable.

We believe that H.R. 10835, if enacted, would constitute landmark legislation charting a new course in governmental protection of consumers. For the first time a statutory agency of Government would be a full-time advocate and defender of consumer rights and interests. For the first time all agencies of Government would be obligated to give due consideration to consumer interests in administering their laws and programs.

The relationships between the new Agency and existing regulatory agencies of Government are defined in workable and understandable ways, so that the new Agency will be able to perform its unique and distinctive functions in behalf of consumers, while the other agencies will not be harassed or thwarted in the administration of other valid governmental missions.

In this age of material abundance, rapid technological change, and industrial ingenuity, American consumers demand and deserve the kind of protection which this legislation would afford. Their health and safety are at stake, not to mention the contents of their pocketbooks.

Legitimate business should have no fear of this bill; indeed, business should welcome its enactment and cooperate in making its administration effective. There are benefits to producers as well as consumers in ridding the marketplace of shoddy merchandise, deceptive practices, and harmful products.

ESTIMATE OF COSTS

We estimate the costs which would be incurred under H.R. 10835 for the first 5 years that it will be in effect as follows:

*Office of Consumer Affairs*¹

Fiscal year:	
1973	\$1, 000, 000
1974	1, 000, 000
1975	1, 000, 000
1976	1, 000, 000
1977	1, 000, 000
Total (Office of Consumer Affairs)	5, 000, 000

*Consumer Protection Agency*²

Fiscal year:	
1973	\$5, 400, 000
1974	6, 325, 000
1975	7, 250, 000
1976	7, 250, 000
1977	7, 250, 000
Total (Consumer Protection Agency)	33, 475, 000

*Consumer Advisory Council*³

Fiscal year:	
1973	\$75, 000
1974	75, 000
1975	75, 000
1976	75, 000
1977	75, 000
Total (Consumer Advisory Council)	375, 000
Grand total (5-year estimate)	38, 850, 000

PRINCIPAL DIVISIONS OF H.R. 10835

Sec.

1. Short title: Consumer Protection Act of 1971.
2. Statement of findings—need.

TITLE 1—OFFICE OF CONSUMER AFFAIRS

101. Establishment.
102. Powers and duties of the Director.
103. Functions of the Office.
104. Transfer of assets and personnel.

TITLE 2—CONSUMER PROTECTION AGENCY

201. Establishment.
202. Powers and duties of the Administrator.
203. Functions of the Agency.
204. Representation of consumers—conditions for intervention in Federal agency and court proceedings—judicial review.

¹ Based on a 1972 budget request of \$925,000 for the Office as established by Executive order.

² Based on an estimated 200 employees in fiscal year 1973, 250 in fiscal year 1974, and 300 in fiscal years 1975, 1976, and 1977. Includes salaries, overhead, printing costs, and computer costs.

³ Based on an estimated 10-15 days of meetings per year. Includes travel costs and per diem of Council members.

- 205. Processing consumer complaints.
- 206. Consumer information and services.
- 207. Product testing and results.
- 208. Consumer safety.
- 209. Prohibitions against certain disclosures.
- 210. Procedural fairness requirements.

TITLE 3—MISCELLANEOUS

- 301. Consumer Advisory Council—composition and duties.
- 302. Protection of consumer interests in all Federal administrative proceedings.
- 303. Saving provisions.
- 304. Definitions.
- 305. Conforming amendments.
- 306. Authorization for appropriations.
- 307. Effective date.

SECTION-BY-SECTION ANALYSIS

Section 1

The short title will be the "Consumer Protection Act of 1971."

Section 2.—Statement of findings

The Congress finds that the interests of consumers are inadequately represented and protected within the Federal Government; and that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free market economy.

TITLE I. OFFICE OF CONSUMER AFFAIRS

Section 101.—Establishment

An Office of Consumer Affairs is established within the Executive Office of the President to be headed by a Director and seconded by a Deputy Director, both to be appointed by the President and confirmed by the Senate. This section would give a statutory foundation to the existing Office of Consumer Affairs, established under Executive Order 11583, dated February 24, 1971.

Section 102.—Powers and duties of the Director

The Director is given the administrative powers and responsibilities ordinarily conferred upon agency heads, such as appointment and supervision of personnel, including experts and consultants, in accordance with the civil service and administrative expense laws; appointment of advisory committees; promulgation of rules necessary to carry out his functions; delegation of authority; making agreements with and obtaining the support of other Federal, State, and private agencies.

The Director is required to submit annually to the President and to the Congress a comprehensive report of activities of the Office, including recommendations for additional legislation and an evaluation of selected major consumer programs of each Federal agency.

Federal agencies, upon request of the Director, are to provide to the Office services and other support, and are to supply information to the Office as may be necessary and appropriate. Reimbursement for such assistance will be governed by existing provisions of law.

Section 103.—Functions of the Office

The functions of the Office of Consumer Affairs will be to—

- (1) assist the President in coordinating the programs of all Federal agencies relating to consumer interests;
- (2) encourage and assist in the development and implementation of Federal consumer programs;
- (3) assure that the interests of consumers are considered by Federal agencies both in the formulation of policies and the operation of programs;
- (4) cooperate with and assist the Administrator of the Consumer Protection Agency;
- (5) advise Federal agencies on programs and activities relating to the interests of consumers;
- (6) recommend to the Congress and the President means by which consumer programs can be improved;
- (7) conduct conferences and investigations on consumer problems not duplicative of other Federal agencies;
- (8) encourage and participate in consumer education and counseling programs;
- (9) support and coordinate research leading to improved products, services, and consumer information;
- (10) provide technical assistance to State and local governments in protection of consumer interests;
- (11) cooperate with and assist private enterprise in the promotion and protection of consumer interests;
- (12) publish in a Consumer Register or in other suitable form the actions of Federal agencies and other useful information in nontechnical language; and
- (13) keep the appropriate committees of the Congress fully and currently informed of all its activities.

Section 104.—Transfer of assets and personnel

The personnel and other assets of the Office of Consumer Affairs and of the Consumer Advisory Committee both established by Executive Order 11583 dated February 24, 1971, as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function granted to the Office or to the Council established by this legislation are transferred respectively to said Office or Council.

TITLE II. CONSUMER PROTECTION AGENCY

Section 201.—Establishment

The Consumer Protection Agency is established as an independent agency in the Executive Branch to be headed by an Administrator and seconded by a Deputy Administrator, both to be appointed by the President and confirmed by the Senate. Employees of the Agency may not engage in business or employment or have interests inconsistent with their official responsibilities.

Section 202.—Powers and duties of the Administrator

The Administrator is given the usual administrative powers and responsibilities conferred upon other Federal agency heads, such as appointment and supervision of personnel, including experts and consultants, in accordance with the civil service and administrative

expense laws; appointment of members of advisory committees, promulgation of rules necessary to carry out his functions; delegation of responsibilities; entering into contracts; and obtaining the support of other Federal, State and private agencies.

The Administrator shall transmit annually to the President and the Congress a comprehensive report of activities of the Agency, including recommendations for legislation and an evaluation of selected major consumer programs of each Federal agency.

Federal agencies, upon request of the Administrator, are to provide to the Agency services and other support, and are to furnish information to the Agency as may be necessary and appropriate. Reimbursement for such assistance is subject to existing provisions of law.

Section 203.—Functions of the Agency

The functions of the Consumer Protection Agency will be to advise the Congress and the President, to promote and protect the interests of consumers, and to—

- (1) represent the interests of consumers before Federal agencies and the courts as authorized;
- (2) in the exercise of its responsibilities under section 207 (relating to product testing), support and encourage research studies and testing leading to better understanding and improved products, services, and information;
- (3) make recommendations to the Congress and the President;
- (4) publish and distribute material developed pursuant to the exercise of its responsibilities which is of interest to consumers;
- (5) conduct conferences, surveys, and investigations concerning the needs, interests, and problems of consumers which do not significantly duplicate similar activities conducted by other Federal agencies;
- (6) keep appropriate committees of Congress fully and currently informed of all its activities; and
- (7) cooperate with and assist the Director of the Office of Consumer Affairs.

Section 204.—Representation of Consumers

This section authorizes the Consumer Protection Agency to represent the interests of consumers in proceedings conducted by other Federal agencies under the provisions of the Administrative Procedure Act (5 U.S.C. 551, et seq.) and in actions pending before courts of the United States under the following circumstances:

Rulemaking and adjudications

If the Agency finds that the result of such a proceeding before a Federal agency may substantially affect the interests of consumers and that the interests of consumers may not be adequately protected unless the Agency does participate or intervene, and if the Agency files in the proceeding and issues publicly a written statement setting forth such findings and also stating concisely the specific interests of consumers to be protected, then the Agency as a matter of right may—

- (1) participate in any rulemaking proceeding (other than one for internal operations);
- (2) intervene as a party and enter an appearance (in accordance with the Federal agency's rules of practice and procedure) in any adjudicatory proceeding if it is not one seeking primarily to impose a fine, penalty, or forfeiture.

Adjudications primarily leading to fines, penalties, or forfeitures and court actions when Federal Government a party

With respect to an adjudicatory proceeding before a Federal agency which does seek primarily to impose a fine, penalty, or forfeiture, or to an action before a court of the United States in which the United States or a Federal agency is a party and which in either case it is the opinion of the Agency that the interests of consumers may be substantially affected, the Agency may, upon its own motion or at the request of the officer charged with presenting the case for the Federal agency or the United States, transmit relevant information or evidence. Furthermore, in the discretion of the agency or court, the Agency may appear as *amicus curiae*.

Court review of agency decisions

The Agency is also authorized (1) to intervene as a party in a court review of a rulemaking or an adjudicatory proceeding where it had already participated or intervened in the Federal agency proceeding; and (2) to institute a review in a competent court of such a Federal agency proceeding if a judicial review is otherwise accorded by law. If the Agency had not intervened or participated in the Federal agency proceeding it may also intervene in or institute an action for court review of the Federal agency's action if it could have intervened below and if the court finds that (1) the agency actions may adversely affect consumers and (2) the interests of consumers are not otherwise adequately represented in the actions. If law or Federal agency rules so require, the Agency must petition for a rehearing or reconsideration before seeking to institute a review proceeding.

Request to initiate a proceeding

The Administrator of the Agency is further authorized to request another Federal agency to initiate a proceeding or take such other actions as it may be authorized to take when he determines it to be in the interests of consumers. If the Federal agency fails to take the action requested, it is required to notify the Agency promptly of the reasons for its failure to do so and such notification shall be a matter of public record.

Orders for witnesses and information

In order to assist the Agency in its functions involving representation and to provide it with necessary information when the Agency has become a party to a proceeding before another Federal agency, it may request that Federal agency to issue and the Federal agency shall issue orders within its powers and subject to the usual rules of relevance and scope for the copying of documents, papers, and records, summoning of witnesses, production of books and papers, and submission of information in writing.

Appearances by Agency

Appearances by the Consumer Protection Agency in Federal agency or court proceedings shall be in the Agency's name and shall be made by qualified representatives designated by the Administrator of the Agency. It is the intent of this legislation that the Agency direct and control its own representation of the interests of consumers.

No interventions in State or local proceedings

This legislation gives the Agency no authority to "intervene" in proceedings before State or local agencies and courts. But the Agency

is not prohibited from communicating with Federal, State, or local agencies in other manners not inconsistent with law or agency rules.

Section 205.—Processing Consumer Complaints

The Agency shall receive, evaluate, develop, act on, and transmit to the appropriate Federal or non-Federal entities complaints concerning actions or practices which may be detrimental to the interests of consumers. Whenever the Agency may (a) receive or (b) develop on its own initiative such complaints or other information that may involve the violation of Federal laws, agency rules or court decrees, it shall (a) take such action as may be within its authority (for example, investigation) or (b) promptly transmit such complaints or other information to the appropriate Federal agency. If the latter, it shall ascertain the action taken by that agency. It shall also promptly notify the party against whom the complaint has been made.

The Agency shall maintain a public document room in which the complaints will be available for inspection. However, a complaint would only be listed and available for inspection (a) if the complainant had not requested confidentiality, and (b) after the party complained against has had 60 days to comment on the complaint and such comment, when received, is displayed together with the complaint, and (c) the entity to which it has been referred has had 60 days to notify the Agency what action it intends to take on the complaint.

Section 206.—Consumer information and services

The Agency is authorized to develop on its own initiative, gather from other sources—both Federal and non-Federal—and disseminate in effective form to the public, information concerning its own functions; information about consumer products and services and information about problems encountered by consumers generally, including those commercial and trade practices which adversely affect consumers.

All Federal agencies which possess information which would be useful to consumers are authorized and directed to cooperate with both the Agency and the Office in making such information available to the public.

Section 207.—Product testing and results

The Agency is directed to encourage and support through both public and private entities the development and application of methods and techniques for testing materials, mechanisms, components, structures, and processes used in consumer products and for improving consumer services. It shall make recommendations to other Federal agencies on research which would be useful and beneficial to consumers.

The Agency is also directed to investigate and report to Congress on the desirability and feasibility of establishing a National Consumer Information Foundation which would administer a voluntary, self-supporting tag program (similar to the "Tel-Tag" program of Great Britain) under which any manufacturer of a nonperishable consumer product to be sold at retail could be authorized to attach to each article a tag, standard in form, on which would be found information based on uniform standards, relating to the performance, safety, durability, and care of the product.

This section directs all Federal agencies possessing testing facilities to perform promptly to the greatest practicable extent within their capabilities such tests as the Administrator may require in connection with his representation function or the protection of consumer safety. Under these circumstances expeditious handling of testing requests would clearly be required. The provisions of law usually governing reimbursement for services would apply.

This bill forbids a Federal agency engaged in testing products under this section or the Administrator from declaring one product to be better, or a better buy, than any other product.

The Administrator is directed to review periodically products which have been tested to assure that such products and resulting information conform to the test results. Note, however, that section 209 below prohibits certain disclosures and protects trade secrets and other confidential business and financial data.

Section 208.—Consumer safety

The Agency shall conduct studies and investigations of the scope and adequacy of measures employed to protect consumers against unreasonable risks or injuries which may be caused by hazardous household products. It should consider identifying categories of hazardous household products and the extent to which industry self-regulation affords protection. Such studies and investigations should not duplicate activities of other Federal agencies.

Section 209.—Prohibition against certain disclosures

Any agency or instrumentality created by this legislation is forbidden to disclose to the public—

(1) information (other than complaints listed and available for inspection under sec. 205 of this act) in a form which would reveal trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) information received from a Federal agency when such agency has notified either of the instrumentalities created by this act that the information is within the exceptions to the availability of information in 5 U.S.C. 552 and the Federal agency has determined that the information should not be made available to the public. This latter prohibition would make it clear that no agency or instrumentality created by this act could serve either purposely or inadvertently as a conduit for information which would not otherwise be made available to the public.

This legislation does not require Federal agencies to release any information to instrumentalities created by the act the disclosure of which is prohibited by law.

In releasing information, except in court or agency proceedings, three provisions are applicable:

1. Data concerning consumer products and services is to be made public only after it has been determined to be accurate and not within the categories enumerated in 5 U.S.C. 552.

2. In disseminating test results or other information where product names may be disclosed it shall be made clear that not all products of a competitive nature have been tested, if such is the case, and that there is no intent to rate the products tested over those which were not tested or to imply that products tested are superior to those not tested.

3. Additional information which would affect the fairness of information previously disseminated will be promptly disseminated in a similar manner.

Section 210.—Procedural fairness requirements

In the exercise of various powers conferred, the Agency shall act pursuant to rules issued, after notice and opportunity for comment by interested persons in accordance with administrative procedures required by 5 U.S.C. 553 relating to administrative procedures-rule-making. This is to assure fairness to all affected parties and provide opportunity for comment on the proposed release of product test data, containing product names, prior to such release.

TITLE III

Section 301.—Consumer Advisory Council

A Consumer Advisory Council will be established, composed of 15 members appointed for staggered terms of 5 years by the President. It will not be a constituent part of either the Agency or the Office but will work closely with them both.

The Council, whose members are to be experienced in consumer affairs and will be compensated when performing their duties, will advise the Administrator and the Director on matters relating to the consumer interest, including means for improving the effectiveness of the Agency and Office and the effectiveness of Federal consumer programs and operations.

The President shall designate the Chairman of the Council and the Administrator of the Agency or his designee will serve as executive director of the Council and provide needed staff assistance and facilities.

Section 302.—Protection of consumer interest in administrative proceedings

Every Federal agency shall, consistent with its statutory responsibilities, give due consideration to the interests of consumers in taking agency actions, and must give notice of such action to the Office and the Agency at such time as notice is given to the public or upon request of the agency.

In taking such action the agency concerned shall, upon the request of the Agency or in those cases where a public announcement would normally be made, indicate concisely in a public announcement of such action the consideration given to the interests of consumers. The Agency, and not other parties, may act to enforce this section in a court.

Since "guidelines" are sometimes adopted by agencies in forms which do not constitute rules or regulations, the committee added the words "or adoption" after the word "issuance" in the opening clause of section 302 to make sure that the Consumer Protection Agency will be notified and have an opportunity to participate in the formulation of such guidelines affecting the interests of consumers.

Section 303.—Saving provisions

Nothing in this legislation shall alter or impair the authority of the Administrator of General Services to represent executive agencies in negotiations with carriers and other public utilities and in proceedings

involving carriers or other public utilities before Federal and State regulatory bodies. Nor does this legislation alter or impair any provision of the antitrust laws or any act providing for the regulation of the trade or commerce of the United States or the administration or enforcement of any such provision of law.

However, nothing in the legislation shall be construed as relieving any Federal agency of any authority or responsibility to protect and promote the interests of consumers.

Section 304.—Definitions

1. "Agency" means the Consumer Protection Agency.
2. "Office" means the Office of Consumer Affairs.
3. "agency", "agency action", "party", "rule-making", "adjudication", and "agency proceeding" shall have the same meaning as in the Administrative Procedures Act, now codified as 5 U.S.C. 551.
4. A "consumer" is any person who uses for personal, family, or household purposes goods and services offered or furnished for a consideration.

5. The term "interests of consumers" means the cost, quality, purity, safety, durability, performance, effectiveness, dependability, and availability, and adequacy of choice of goods and services offered or furnished to consumers; and the adequacy and accuracy of information relating to consumer goods and services (including labeling, packaging and advertising of contents, qualities, and terms of sale).

Section 305.—Conforming amendments

The Director of the Office and the Administrator of the Agency are both placed on the executive schedule at level III (\$40,000 per annum).

The Deputy Director of the Office and the Deputy Administrator are placed on the executive schedule at level IV (\$38,000 per annum).

Section 306.—Appropriations

Authorizes the appropriation of such sums as may be required to carry out the provisions of this act. No limitation is placed and fixing the amount will be in accordance with the annual appropriations process.

Section 307.—Effective date

The legislation takes effect 90 days after it has been approved, or earlier if the President so prescribes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTIONS 5314 AND 5315 OF TITLE 5, UNITED STATES CODE

Chapter 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * *

§ 5314. Positions at level III

Level III of the executive schedule applies to the following positions, for which the annual rate of basic pay is \$40,000;

(1) * * *

* * * * *

(58) *Director, Office of Consumer Affairs.*

(59) *Administrator, Consumer Protection Agency.*

§ 5315. Positions at level IV

Level IV of the executive schedule applies to the following positions, for which the annual rate of basic pay is \$38,000:

(1) * * *

* * * * *

(95) *Deputy Director, Office of Consumer Affairs.*

(96) *Deputy Administrator, Consumer Protection Agency.*

* * * * *

ADDITIONAL VIEWS OF HON. JOHN E. MOSS

American consumers want and need an effective advocate of their interests in the Federal Government. To the extent H.R. 10835 creates such a consumer advocate, I support it. While the bill is an improvement, of significance, over present law—nevertheless, I believe that it can be improved and strengthened by certain modifications. Among them are the following—

1. The Consumer Protection Agency should be authorized to intervene as a matter of right in any Federal administrative proceeding and limitations on this right which were added to the Committee bill should be eliminated.

2. The Consumer Protection Agency should be authorized to participate in state and local administrative proceedings where the Federal Government has either delegated authority to the states or has authorized non-conflicting state regulation.

3. Subpoena power should be granted to the Consumer Protection Agency under conditions requiring that information requests be relevant to proceedings in which the Agency may participate and not unduly onerous.

I intend to support amendments on the floor of the House of Representatives which would give the added strength to this legislation which I feel is essential if it is to be as effective as it should be for the consumer.

JOHN E. MOSS.

ADDITIONAL VIEWS OF HON. DON FUQUA

There never was a serious question in the Subcommittee and Committee deliberations as to *whether* Congress should enact a meaningful and lasting law to achieve greater federal consumer protection efforts. There was, however, considerable debate as to *how* this might be achieved in a meaningful and lasting law.

The debate is not concluded with this report. Many of us have reservations as to whether the reported bill is in proper form to live up to its proposed title, the Consumer Protection Act of 1971. We have chosen, however, not to lay this bill aside for further consideration next session.

Rather, we have joined with the Chairman, in his diligent and difficult effort to report, within the Rules Committee deadline, a bill covering a multitude of complexities. We expect that further attempts to modify the bill will be made at later stages of the legislative process.

It ought to go without saying that, in the end, Congress should enact a law that will allow the new Consumer Protection Agency healthy growth with an orderly progression of powers. Such a law should neither place the Agency in a position where progress would be impossible, nor should it give the Agency responsibilities beyond its initial capabilities.

There is serious doubt in my mind as to whether the bill reported by the Committee can meet these basic tests of viability.

BRIEF HISTORY OF THE BILL

For at least a decade prior to the 1969-70 Government Operations hearings on establishing a federal consumer unit, there had been an evergrowing movement for a Cabinet-level Department of Consumer Affairs with major substantive consumer protection powers. Indeed, during 1969 the movement had reached such proportions and the number of sponsors had so increased that many Congressmen were personally convinced that such a Department would soon be legislated into existence.

The 10-year movement was significantly altered in 1969, primarily by one man: Ralph Nader. He, and one or two other consumer spokesman, testified against the concept of a full-fledged Department wanting instead a more politically independent and flexible unit that would not be burdened by the pressures inherent in regulatory activity.

During the 1969-70 hearings, the Department of Consumer Affairs bill was completely revised with the assistance of Mr. Nader and several other consumer spokesmen, and provisions to create an independent Consumer Protection Agency were substituted for it.

By this time, however, there were only two more days of hearings before the then Subcommittee on Executive Reorganization went

into Executive Session to mark-up a bill. Mr. Nader appeared again at these hearings, offering strong and persuasive testimony for adoption of the new Consumer Protection Agency concept.

Meanwhile, another alternate proposal to the Department concept was also receiving significant attention. This would have created a statutory Office of Consumer Affairs in the Executive Offices of the President.

In executive session, the Subcommittee accepted the arguments in favor of an independent consumer unit, and decided that the idea of a statutory White House Office of Consumer Affairs need not be considered as mutually exclusive to an independent agency, but that such an Office could complement the Agency.

The two proposals were joined as a completely new approach and reported to Full Committee which, in turn, reported without change the bill for an independent Consumer Protection Agency and White House Office of Consumer Affairs.

As the 91st Congress drew to a close, this new proposal was presented to the Rules Committee. The Government Operations Committee sponsors, in unusual but constructive testimony before the Rules Committee, announced that if a rule were granted, they would offer 13 amendments to the bill on the Floor to clarify certain provisions that were receiving a considerable amount of criticism.

Congress by this time was about to adjourn. The Rules Committee, by a tie vote, refused to grant a rule that would allow the bill to go to the Floor.

Last year's bill with the promised 13 amendments was among the first bills to be introduced this year. It carries the numbers H.R. 14, 15 and 16, all identical proposals. Extensive hearings by an enlarged and revitalized Subcommittee began in April and ended in mid-July.

It soon became apparent in these hearings that the bill was far from perfect. Everybody from the business community to the federal agencies to consumer interest groups suggested amendments. Not one witness was satisfied with the bill as written.

The Subcommittee had to delve, with the aid of expert witnesses, into the recesses of administrative law, finding there further need for revisions. For example, it was discovered that the proposed Consumer Protection Agency, under the original bill, probably had no authority to participate in the important area of rule making by federal agencies. Extensive Subcommittee mark-up sessions were held.

SIGNIFICANCE OF THE NEW OFFICE-AGENCY PROPOSAL

Although this year's hearings constituted the only Congressional public forum to debate the merits of an Office-Agency approach to consumer protection (and only two days of hearings last year constitute the record for a single, independent Agency approach), this year's record contained adequate information for the Committee to report out proposed enabling legislation for initial consumer protection activities.

There is for some of us, however, a philosophic problem concerning the reported bill. The reported bill follows the pattern of last year's Committee bill in that it rejects the once popular notion of placing major *substantive* consumer protection powers in a new federal De-

partment. Instead, the Agency, under the major provisions of the present bill, would be granted *procedural* tools with which to attempt to get other federal agencies to give due consideration in their proceedings to the interests of consumers.

Having made the significant decision to keep substantive consumer protection activities in existing federal agencies, it would appear that the next logical step would have been to empower the untried Agency—at least initially—to *assist* these other federal units in giving due consideration to the interests of consumers. This, however, is not the approach taken in the reported bill, and herein lies the problem referred to above.

ADVERSARY ADVOCACY APPROACH: THE WATCH DOG THEORY

The reported bill adopts the view of some witnesses who appeared at the hearings that the chief purpose of the bill should be to create an adversary advocate who, in the interests of consumers, would *oppose* other participants in federal agency proceedings—or even the federal agencies, themselves—who might take positions different than the consumer advocate.

The press has characterized the proposed advocate as a “watchdog”. This raises the question in my mind of who will watch the watchdog. An even more troublesome question is raised: whether it is more proper for Congress to (a) help federal agencies when they are in need of guidance or direction, or (b) create a watchdog with an exceedingly long leash to attach Congressionally established federal agencies when they do something that agitates the watchdog.

ENVIRONMENTAL LEGISLATION ANALOGY

Adversary advocacy can be a powerful tool. We have seen private advocates under the new National Environmental Policy Act of 1970—with nowhere near the powers proposed for the Consumer Protection Agency—stop entire federal agency programs in their tracks.

For example, a recent case against the Atomic Energy Commission by environmentalists retarded the entire program for constructing nuclear power reactors planned to meet the growing needs for electricity.

We are beginning to hear misgivings from Congressmen concerning the National Environmental Policy Act of 1970 and similar sweeping legislation directed toward environmental protection. These misgivings are not indications of a feeling that environmental protection is not of crucial importance; rather, they indicate a concern that, perhaps, in our efforts to preserve the balances of ecology we have made several mistakes which might create an imbalance in government.

The environmental advocates should not be criticized for their tremendous successes; they should be praised. The essence of adversary advocacy is to win for your special interests, using all the guile and resources you can fairly muster. It is not the job of the environmentalist to worry about balancing the broad public responsibilities of particular federal agencies; his only concern should be to prevent federal action inimical in any way to his special interests.

WHAT IS THE GOVERNMENT'S POSITION?

There is, however, a basic distinction between allowing a private advocate to challenge a federal agency to protect special interests and creating another federal agency to do the same. It is true today that, in certain limited instances, we do find one federal agency taking a contrary position on narrow questions in the proceedings of another federal agency. For example, the Justice Department may intervene in the proceedings of other agencies (at the discretion of these agencies) to raise objections on antitrust grounds.

However, no federal agency presently has the power to intervene or participate as a matter of right in the proceedings of other federal agencies to protect such pervasive interests as those of the consumer.

Creating one broad-based federal agency with special interests to challenge other federal agencies with broader interests, thus making the government "fight it out" on highly-charged and politically sensitive issues, may prove to be shortsighted.

Relying on the federal courts to second guess expert administrative agencies on technical matters of immense economic significance, rather than attempting to perfect the administrative forums, may also be a dangerous experiment.

Further, if such an approach were taken, it would perpetuate, and Congressionally confirm, the growing trend toward using a negative, "I-don't-want-to-get-too-involved" approach to solving serious problems in the management of the government.

SPECIAL PROBLEMS FOR PRIVATE ADVOCATES

Another problem resulting from the adversary advocacy approach taken in the reported bill is the resulting serious risk it would create of jeopardizing the growing movement of private adversary participation in federal proceedings.

The general counsel of the Consumer Federation of America testified that this was a "serious problem" in the bills, admitting that, due to the proposed Agency's Congressionally created stature and power, he would probably lose any case where he and the federal consumer advocate took differing positions on an issue.

It became abundantly clear at the hearings that many issues these days are subject to a multiplicity of contradictory, but entirely valid, consumer points of view and that these issues may be subjected further to additional differing valid viewpoints of those with other special interests.

For example, some consumers may very well be willing to pay an electricity rate increase to compensate for the burial of overhead transmission lines that reduce their property values, while other consumers may object to the spreading of such a cost to all electricity users merely to satisfy the few who bought property close to the lines. Environmentalists, on the other hand, could take the side of one or the other group of consumers, depending on the environmental impact of the burial of the lines.

Similarly, some consumers may favor the freest possible trade with foreign countries on the basis of the dampening effect this competition has on domestic prices. Other consumers, however, may feel that, in the long run, the absence of fairly rigid import controls could lead to a complete destruction of the American economy, loss of jobs and there-

fore a detriment to consumers. State Department policies and the interests of labor groups and American businessmen will also result in differing viewpoints on this subject, all of which must be balanced.

Although consumer groups recognize that they will be faced with serious problems in challenging the federal advocate on a question susceptible to two positions, they apparently are willing to take the risk.

One may wonder whether they have thought it through. We are talking here about a federal agency. In short, a bureaucracy. It will not, by mere virtue of its structure, be able to please all consumers, and it is a fairly safe bet that it often will not be able to please the most vocal consumer spokesmen.

FRIEND OF THE CONSUMER APPROACH

No one knows, at this stage, how effective the proposed Consumer Protection Agency might be. But the preceding paragraphs should indicate that there are reasons to wonder whether we would be signing the Agency's death warrant by allowing the bill to proceed to enactment without change.

There is serious doubt as to whether the reported bill would give the untried Agency a realistic chance to achieve immediate results and to identify its strengths and weaknesses.

During the second day of hearings, the question arose as to whether the proper initial role of the Agency might be in the nature of an *amicus curiae*, "friend of the court". That approach presently appears more prudent than an adversary advocacy approach for a new federal agency operating with such a wide scope of interest in such uncharted waters.

Corpus Juris Secundum, a major legal encyclopedia, defines *amicus curiae* as follows:

An "*amicus curiae*," literally meaning a friend of the court, is one who, as a standerby, when a judge is doubtful or mistaken, may inform the court. The term is also sometimes applied to a person who is not a proper or necessary party, but who is allowed to appear to protect the interest of a party he represents. Leave to appear as *amicus curiae* differs from intervention in that the intervenor becomes a party to the litigation, and is bound by the judgment, while * * * an *amicus curiae* does not become a party to the proceedings." (3 C.J.S. *Amicus Curiae* §1.)

The *amicus* approach, if adapted to agency (rather than court) proceedings, and if made a matter of right rather than privilege, would solve many of the problems that would be created by making a federal consumer advocate a party opponent.

It is a positive approach implying a type of friendly intervention to assist, rather than oppose, another federal agency in making a proper decision. Such a "friend of the consumer" approach, coupled with an effective mechanism to assure bureaucratic responsiveness, could form the basis for effective consumer advocacy.

The problems with this approach lie not in the ideal, but in the fact that it would have to be adapted from present court usage to agency usage within the intent of the proposed legislation. These problems are by no means insurmountable.

If adequate consideration of the interests of consumers in federal agency proceedings were made a required legal condition, an appearance by a federal advocate as "friend of the consumer" could serve to instruct the agency when it appeared to be going wrong in not granting such consideration.

This could be in the nature of a "friendly warning" from one federal agency to another, thus overcoming the inherent embarrassment and political contradiction of adversary advocacy between federal agencies.

The *amicus* approach offers the great advantage of flexibility and maximization of the limited resources that will be available to the Agency which even so could not hope to participate in more than a token few of the thousands of federal proceedings that substantially affect the interests of consumers.

The Agency would not be faced with the situation of having to recruit experts in securities, food and drug, antitrust and other esoteric forms of law, only to find them swallowed up for two- and three-year proceedings. The advocate, as an *amicus*, could make an initial presentation of the consumer interests that a particular agency should consider, and then remove himself from the proceeding.

No great restrictions would have to be placed on what type of administrative or court proceedings the advocate would be empowered to appear in—he could present, as an *amicus*, the consumer view as a matter of right in any proceeding of his choice without risking harm to due process.

After the proceeding, the Agency could be granted the right to review the transcript and any other papers developed during the proceeding. Within a reasonable time it could then transmit its views on the weight to be given submitted information as well as its views on what additional information might be needed for the forum agency to give due consideration to the interests of consumers in taking any action based upon the proceeding. (Due process, of course, would require that such a transmittal by the Agency be open to comment by other participants for a short time under appropriate rules of practice and procedure.)

In the immediate interest of good government and the long-term interests of consumers, I intend to develop further this "friend of the consumer" approach in the hopes of offering it as a viable alternative on the Floor. I believe that it can work and that it deserves an initial trial.

In short summary, what I envision is requiring, by law, that all existing federal agencies give due consideration to the interests of consumers, and empowering the Consumer Protection Agency to appear, as a matter of right, as a "friend of the consumer" in any agency or court proceeding of his choosing to present the consumer viewpoint. The Agency would also be granted the right to review and comment upon material submitted in a proceeding prior to agency action.

The goal would be to give the untried Agency a realistic chance to achieve immediate results and an opportunity to identify its strengths and weaknesses. It is only a first step, but a sure one.

DON FUQUA.

JOHN N. ERLNBORN.

CLARENCE J. BROWN.

JOHN BUCHANAN.

GARRY BROWN.

ADDITIONAL VIEWS OF HON. FLORENCE P. DWYER

So much attention has been given in recent days to allegations—largely unfounded and greatly exaggerated—that the Consumer Protection Act of 1971 as introduced in January by Mr. Holifield, Mr. Rosenthal, and me, with numerous cosponsors, has been seriously weakened by the committee that it is important to correct this erroneous notion.

As the original sponsor of the legislation on which the present bill is largely based, I want to emphasize two points:

First, as reported by the committee, this is a strong, responsible, and potentially very effective bill. There should be no misunderstanding this fact. Every effort to seriously weaken the bill both in subcommittee and full committee was defeated. No one devoted to consumer protection—and I write as one dedicated to this cause for many years—need apologize for the bill the committee has produced. It is as good as most of us hoped for, and better than many of us feared.

Second, by the same token, this bill will not endanger the legitimate interests of businessmen, their companies or their organizations. Every reasonable effort to build into the emerging consumer protection organization at the Federal level a high degree of responsibility has been accepted by the committee. Neither individual companies nor Federal agencies—so long as they are acting in the public interest—need fear harassment by Federal consumer protection officials.

Criticism of the bill has focused primarily on the contention that the proposed Consumer Protection Agency would be denied the right to participate in other agencies' informal proceedings and actions and would be precluded from intervening in formal adjudicatory proceedings which seek primarily to impose a fine, penalty, or forfeiture. Critics contend that these exceptions would exclude the new Agency from a major portion of issues affecting the interests of consumers.

In my judgment, it was never the intention of the committee to remove the Agency from participation in matters directly affecting consumers, nor will this result, in fact, occur under the provisions of the bill.

First, an examination of the Administrative Procedure Act makes clear that the terms "rulemaking" and "adjudication" embrace most agency proceedings. Second, the term "primarily" is not intended, in my judgment, to cover agency proceedings where the imposition of a fine, penalty or forfeiture is clearly secondary in purpose to the protection of the interests of consumers.

Critics, I believe, tend to overlook the impressive array of powers and influence which the bill gives to the new Agency. In addition to its right to participate as a party in rulemaking and adjudicatory proceedings and its broad access to the courts, the Agency has the right to obtain information from other agencies, to request specific action by those agencies on behalf of consumers, to require public

justification of an agency's refusal to act, to certify information and complaints to those agencies, to be informed by such agencies of all actions of any kind that affect consumers substantially, and to hold agencies legally responsible for giving due consideration to the interests of consumers in taking, or refusing to take, such actions.

This is pioneering legislation, and for the first time in history American consumers will be supported by a Federal organizational structure empowered to act effectively on their behalf wherever and whenever their interests are at stake.

FLORENCE P. DWYER.

ADDITIONAL VIEWS OF HON. OGDEN R. REID AND HON.
PAUL N. McCLOSKEY, JR.

We are disappointed at the failure of the Committee to report a stronger consumer protection bill.

We have discovered time and time again that the mere existence of a vehicle for progress, in this case an independent Consumer Protection Agency, can be meaningless unless given legal authority to intervene on behalf of those it is supposed to represent. We fear that the vehicle which has emerged in this bill will be little more than a figurehead, speaking for the consumer, yet unable to act for him. At this time, when the regulatory agencies have so clearly failed in representing the consumer's interest, it would be hypocritical for the Congress to set up an Agency which would not even have the power to intervene in a case such as the Bon Vivant Case, where one can of soup killed a man and paralyzed his wife, or in a case such as the FDA-USDA handling of PCB contamination of millions of chickens, turkeys and eggs during the past few months.

Although the bill would permit the CPA to participate in strictly formal rule-making procedures, it would bar intervention in informal deliberations. We point out, however, that in some agencies, up to 98% of the rulemaking is "informal." It is in these informal proceedings that the consumer's battle can be won or lost. Informal areas (in which under this bill CPA intervention is prohibited) include information policies and disciplinary actions of the USDA; including specifically the amount of DES (a growth hormone) can be put in beef, whether preservatives (BHT) should be put in bread, what the effect of sodium nitrate (a poisonous preservative and food coloring) is in hot dogs, and how much water can be legally and healthfully permitted in poultry.

Other informal areas include investigations on vehicle defects involving car safety or truck safety, and compliance activities such as enforcement or nonenforcement of moving van violations, truth in lending or truth in packaging, and flammable fabric toy hazards. We could add to the list almost indefinitely—to include FTC informal settlements on flammable products and, the informal disposition of complaints under the CAB against air carriers.

To add insult to injury, however, the Committee restricts the CPA even further. It is prohibited from intervening in proceedings initiated "primarily to impose a fine, penalty or forfeiture for an alleged violation by any defendant or respondent therein . . ." This limits the scope of the CPA even further: in the 378 formal adjudications which were underway before the CAB on July 1, 1971, every single one of them sought the imposition of a penalty, thus prohibiting CPA intervention.

We will therefore offer or support language which substitutes "solely" for "primarily," and "individual" for "defendant or respondent." This amendment would broaden the scope of the CPA's duties in adjudicatory proceedings by narrowing the scope of the limitation presently in the bill.

We also believe that the CPA should be given authority to obtain subpoenas for its investigations and surveys in other than strictly formal proceedings. To deny a new agency such authority is to make a mockery of our obligation to safeguard the consumer rights.

In sum, although we support the concept of an independent agency to represent the consumer, and although we voted to report the bill in order to open up an issue which has been bottled up in one committee or another for too long, we hesitate to endorse it fully. It is indeed disillusioning to think that perhaps the Congress is moving not forward but backward, as illustrated by comparing this bill to last year's stronger version.

We are proposing no new enforcement or punitive powers; we are proposing only that consumers be given the right to representation before federal agencies or in court. Surely a corporation or business which acts honestly has nothing to fear from an Agency with the powers we propose.

We will join in supporting amendments to strengthen consumer representation in the bill, so that the Consumer Protection Agency will indeed be able to live up to its name.

OGDEN R. REID.
PAUL N. McCLOSKEY.

ADDITIONAL VIEWS OF HON. JOHN N. ERLNBORN

The rise of the technological revolution has created an affluent American society. Accordingly, the standard of living and the overall level of welfare of each citizen have been raised to heights never achieved before. In realizing these objectives, however, the complex nature of much modern merchandise and the intricacies of marketing mechanisms have all too often left the consumer confused, uninformed, and at the mercy of the marketplace. Many efforts have been made in the past to increase Government protection of the consumers' interests—new agencies have been created, new powers conferred, new programs initiated. Too often, unfortunately, Federal agencies have administered programs in ways which have failed to consider adequately the rights and needs of consumers or have permitted the regulation of such interests to become ensnared in bureaucratic red-tape. There have been in our judgment no devils in the woodwork dedicated to undermining the welfare of consumers. Yet, through the complexities of modern life they have been ignored and to too great an extent.

Enactment of H.R. 10835—the Consumer Protection Act—should contribute to overcoming this failure, if enforced reasonably and wisely, by injecting the voice of the consumer into the operations of the Federal Government and by otherwise making the consumer an informed and intelligent buyer.

President Nixon in his Consumer Message to Congress in 1969 announced a buyer's bill of rights to uphold the consumers' interests:

I believe that the buyer in America today has the right to make an intelligent choice among products and services.

The buyer has the right to accurate information on which to make his free choice.

The buyer has the right to expect that his health and safety is taken into account by those who seek his patronage.

The buyer has the right to register his dissatisfaction, and have his complaint heard and weighed, when his interests are badly served.

We fully subscribe to this code and believe it succinctly represents the duties and responsibilities that should be assumed by the Consumer Protection Agency (CPA) created by this legislation. To the extent the CPA directs itself toward acting as the voice of the consumer and is guided by the buyer's bill of rights, we believe the interests of consumers will be materially advanced. We are concerned, however, that the bill, as reported from committee, goes beyond the limits of such protection and tends to clothe the CPA in the robes of prosecutor. This, in our opinion, would be unwise.

A majority of the members of the committee intentionally determined that the CPA should not be made into a super agency which, armed with broad prosecutorial powers, would, on the one hand,

have the authority to interfere with and overrule the actions of other Federal agencies, while, on the other hand, supplanting such agencies in the regulation of commerce. To permit the establishment of such super agency could seriously undermine the interests of consumers in many respects. The welfare of consumers is unavoidably associated with that of business, government, and the economy. If the processes of government are stymied and hamstrung or if the affairs of business are under constant harassment and attack, then neither will be able to function effectively. Such disruptive tactics will have the immediate effect of preventing government from discharging its responsibilities to protect the public, while forcing business to raise costs and to compete less effectively. Ultimately, such behavior could undermine the economy upon which the consumers' affluence and well-being depend.

The legislation, as reported from committee, has properly surrounded the CPA's authority with certain safeguards. For example, instead of conferring broad subpoena power upon the CPA itself, which could be used as a disruptive device, the committee has conferred upon it the same rights as are possessed by any other party to a proceeding, namely, the right as a party intervener to have the regulatory agency subpoena necessary information and witnesses in its behalf. Similarly, restrictions are placed upon the CPA's authority to disseminate information so as not to violate confidence, disclose trade secrets, or connote a preference for the products of one company over another. The CPA is also precluded from exercising the right to intervene in investigations or other informal proceedings of Federal agencies. To permit intervention in informal proceedings would clearly convert the CPA into a super agency which could intrude upon every detail and every function of every other agency including those involving the most sensitive affairs of government, business and individuals.

We are extremely concerned, however, that these safeguards are not in themselves sufficient to prevent the CPA from usurping the responsibilities of other Federal agencies or from unduly burdening the legitimate affairs of business.

H.R. 10835 authorizes the CPA to intervene as a party in a wide spectrum of adjudicatory, as well as rulemaking, proceedings of Federal agencies, and to appeal any rulings or orders thereof to Federal courts which it believes adverse to the consumers' interests. The extent of its authority would include its right to intrude into agency proceedings relating to the taking or withholding of property, prohibition or limitation of rights and freedom of individuals, revocation or suspension of licenses, or the restraining of certain actions. An individual or businessman already is forced to defend himself against the heavy hand of agency "prosecutors" and to contend with the procedural intricacies of Federal regulatory proceedings. To burden defendants further by forcing them to contend against a second "prosecutor" both at the Federal agency level and in the courts seems not only unfair, but economically destructive.

The main thrust of criticism lodged throughout the hearings on consumer affairs has been that the voice of consumers has been absent in deliberations before Federal agencies. This criticism has been met in this legislation by establishing the CPA and authorizing it to inform the Federal agencies and courts fully concerning the needs and interests of consumers when matters affecting consumers are before them. The preferable approach for the positive expression of the voice of the

consumer is that of the *amicus curiae*, described as "friend of the consumer" in the supplemental views initiated by Representative Don Fuqua. If, however, the House determines that the CPA should have the right to intervene as a party, we believe that right should be limited to route, rate and similar categories of broad economic proceedings where the interests of consumers are clearly involved. Moreover, if the *amicus* approach is unacceptable to a majority of the Members of Congress, we believe the CPA's authority to initiate appeals to agency actions should extend only to those actions where the interests of consumers have been clearly disregarded in matters jeopardizing the health and safety of individuals. To permit the CPA to intervene as a party in proceedings involving the imposition of "sanctions" or other matters specifically burdening individuals rights would seem unjustified and potentially harmful to the best interests of consumers.

The second issue is the authority the bill provides for the CPA to intervene in or institute court proceedings, even if it had not intervened at the agency level, if the court finds that agency action might adversely affect consumers and the interests of consumers are not otherwise adequately represented in the action. This authority is totally open-ended and permits the CPA to initiate action at some time long subsequent to the original agency action. It would create a new right of review. Under another provision of the bill, the CPA's authority to take a matter to the courts is circumscribed by "the right of judicial review * * * authorized by law." No such limitation is contained here. In consequence, legal requirements concerning statutes of limitations, equitable estoppel, laches, and other doctrines of fairness are not made applicable to the CPA's authority—an oversight which must be corrected.

The third inequity in the bill relates to the testing authority of the CPA. As one of the safeguards against the CPA's misuse of power, the committee determined in H.R. 10835 that the CPA should not engage in product testing itself but rather should call upon other existing Federal agencies, possessing appropriate testing authority, to conduct needed tests in support of the CPA's representational and product safety responsibilities. Unfortunately, the committee failed to incorporate necessary language specifically spelling out this restriction. As the bill is written, the CPA may be able to utilize authority conferred upon it through various other provisions to engage directly in, or have others engage in testing for it, for any purpose whatsoever. We believe the incorporation of a simple statement in the bill would correct this probable loophole.

Finally, we believe the authority contained in the committee bill for the CPA to engage in product safety matters is a function which is not directly in keeping with the CPA's primary responsibility to represent consumers before Federal agencies. In fact, having to involve itself in product safety functions could seriously detract from its representational duties. The President has conferred upon the Department of Health, Education and Welfare responsibility over product safety similar to that which H.R. 10835 grants to the CPA. Also, there is now pending before House and Senate Commerce Committees legislation to establish independent facilities for the purpose of devoting full time to product safety. These alternatives, in our opinion, are far superior to the grant of authority to the CPA under this bill. Further, we question whether this committee should have jurisdiction of legislation in this area.

In conclusion, we believe the American consumer requires greater protection of his interests. We believe that H.R. 10835 contains many excellent features to advance this cause; but we also believe it contains certain elements of authority which could seriously jeopardize the economy and the public welfare, as well as the long term interests of consumers. The elimination of those harmful features will significantly improve this bill and serve best the interests of society.

Respectfully submitted.

JOHN ERLBORN.
DON FUQUA.
CLARENCE J. BROWN.
GUY VANDER JAGT.
JOHN BUCHANAN.
SAM STEIGER.
GARRY BROWN.
J. KENNETH ROBINSON.
WALTER E. POWELL.
CHARLES THONE.

ADDITIONAL VIEWS OF HON. CLARENCE J. BROWN

This bill is a response to the charge that some federal agencies now responsible for protection of the public interest either are not adequately acquitting that responsibility (including their responsibility to the consumer) or that the "consumer interest" and the "public interest" are sometimes incompatible.

If the initial charge is accepted, then it would seem to be preferable to reorganize and revive the agencies grown lax rather than to create a new agency. The Nixon Administration has chosen this more economical and practical approach with at least one agency, the Federal Trade Commission, following charges from several sources that it had grown more responsive to those it was supposed to be regulating than to public interest. In addition to personnel changes and administrative action, the current administration has undertaken thorough study of the structure and function of all independent regulatory agencies and recommended general reforms which must be undertaken by statute. And specific statutory changes have been recommended in certain specific agencies.

But such regulatory reforms do not answer the contention of incompatibility between "public" and "consumer" interest which argues that consumers have special concerns which have either been too much subordinated in the general public interest or are, in fact, in conflict with the interest of the general public.

If one accepts this theory of conflict between consumers and public and that the agencies charges with "public interest" are too inclined to subordinate or ignore "consumer interests" and that some opportunity for a special presentation of "consumer interests" must be provided, the question becomes how this can be best accomplished. The committee has evolved a new Consumer Protection Agency which would participate as a party in proceedings before a host "public interest" agency. Presumably, we are asking the taxpayer to finance the consumer position and support it with the prestige of a separate new agency because we feel the consumer interest is second only to the public interest and that consumers (compared to producers) are, like the general public, unable to look after their own interest adequately without government power and purse. (In view of the shift in the burden of legal precedent in recent years from "let the buyer beware" to "let the seller beware" and in view of the rise of private advocates in the consumer interest well-financed by private support and well-supported by public media, one might question the need for taxpayer support and separate federal authority. The powers of such a new Consumer Protection Agency are the issue and Section 204 of the bill is the focal point of these powers. The consumerists would wish the agency to be able to overwhelm existing old line agencies and their view of "public interest" to the new "consumer interest" This course is as indefensible as to ignore the "consumer interest" altogether in determining "public interest".

In attempting to strike a compromise, the committee has improved the bill from its earlier form. But the powers it gives this new agency may still be so broad that the least desirable result of all will follow: legal tangles so frequent and so involved that existing agencies will be prevented from acting with finality because they will be delayed in legal snarls created from the conflicts between consumers and the public or—ridiculous as it may sound—between two different federal versions of the consumer interest—both fully financed by the taxpayer who is at once consumer and public. In their views, both Mr. Erlenborn and Mr. Fuqua make this point and suggest methods by which this legislation would be modified to provide for a less radical and potentially frustrating approach. The *amicus curiae* approach would establish an agency that would learn to walk before it runs. Or at least an agency which would have time to determine whether the consumer interest is best served by orthopedic shoes as opposed to high fashion pumps.

I support the legislation, but feel that it may be improperly shod if it is to run well in the future.

CLARENCE J. BROWN.

ADDITIONAL VIEWS OF HON. GILBERT GUDE

The reporting of H.R. 10835—the Consumer Protection Act—establishes that the rights and interests of consumers are finally to be recognized.

This legislation, if effectively implemented, should significantly overcome the imbalance that presently exists between the rights of consumers and those of producers, especially as regulated and administered by agencies of the Federal Government.

Without question, the most important feature of this legislation—that which makes it worthwhile supporting—is the unique and pioneering creation of an independent Consumer Protection Agency (CPA) which is granted the authority to intervene in the formal proceedings of every other Federal agency where the interests of consumers may be involved in order that the interests of consumers may be adequately represented. The CPA is also authorized to appeal any adverse decisions of such agencies to the courts in proceedings in which it had intervened.

Over the years, Congress has enacted important programs covering most aspects of life with the intent to protect and advance the welfare of the individual. But, as is generally well known, such programs have been administered by Federal agencies in ways that have ignored the interests and welfare of those to be benefitted through regulation while benefitting and promoting the cause of those to be regulated. One need only experience the purchase of dangerous or worthless drugs, adulterated or poisonous foods, faulty appliances, unsafe automotive products and tires, shoddy construction materials, flammable clothing, hazardous toys, overpriced utility services and petroleum products, or any number of other worthless or fraudulent products and services to fully appreciate how weak the voice of consumerism has been up to now, especially within the Federal bureaucracy. The enactment of this legislation is intended to overcome this deficiency. The question is whether it accomplishes its purpose. I have serious doubts.

In two significant areas, the legislation is either deficient in the authority it confers upon the CPA or unacceptably restrictive in the ways the CPA can exercise such authority.

The most damaging and destructive provision in the bill is that contained in section 204(a)—the heart of the bill—which confers the intervention authority upon the CPA. While the general authority is extended to the CPA to intervene as a party in rulemaking and formal adjudicatory proceedings, an exception has been inserted which precludes such intervention in adjudications “seeking *primarily* to impose a fine, penalty, or forfeiture for an alleged violation by any defendant or respondent therein of a statute of the United States or any rule, order, or decree promulgated thereunder.”

The damaging effect of such a broad exception can be incalculable. If interpreted expansively, it could exclude the great majority of all Federal agency proceedings which impinge upon the interests of consumers. The fact that the CPA could still forward information to an

agency which is conducting a proceeding would in no way compensate for such a diminution of authority to intervene as a party with the right to cross-examine all other parties, to request the subpoenaing of pertinent information and witnesses, and to appeal adverse rulings.

There are those who maintain that the above quoted exception would be interpreted narrowly so as to apply only to proceedings directly applicable to the imposition of a fine, penalty, or forfeiture. It is my belief, however, that every proceeding of an agency can be interpreted as "seeking * * * to impose"—read as "leading to the imposition of"—a fine, penalty, or forfeiture if improper activities under an agency's jurisdiction are or may be committed.

Every Federal agency is granted cease and desist or similar type injunctive authority. Certainly, violations of this authority could lead to civil or criminal fines, penalties or forfeitures, including denials or revocations of licenses, grants or other benefits. But, one need not rest the case there. Statute after statute presently in force provides direct and immediate punishment for every form of activity of vital concern to consumers:

Dissemination of false advertising calls for the imposition of a \$5000 fine and six months in jail for the first offense, and a \$10,000 fine and one year in jail for each subsequent offense.

Misbranding of wool, fur, or textile products will bring a \$5,000 fine and up to a year in jail.

Unlawful sale of stock securities calls for punishment of a \$5000 fine and imprisonment for up to five years.

Unlawful operation of motor carriers under supervision of the ICC can result in a fine of \$100-500 for the first offense to \$200-500 for subsequent offenses.

Violation of the Food and Drug Act calls for the imposition of a penalty of a \$1000 fine and one year in prison for the first offense, and a \$10,000 fine and three years for subsequent offenses.

Unlawful activities under the Natural Gas Act may bring forth \$5000 fines and two years in prison.

The above are but a limited sampling of such penalty provisions in the Federal law. The list could be broadened to cover almost every form of regulated activity engaged in by Federal agencies. To retain this vast exclusion in the bill could seriously jeopardize the intent and purpose of the legislation.

Closely related to the above issue is the second provision of the bill which unduly restricts the authority of the CPA. Again, in turning to section 204, the committee limited the intervention authority of the CPA as a party to rulemaking and formal adjudicatory matters. The fact is, however, that extensive activities are carried on by Federal agencies under informal procedures and investigations.

The Federal Trade Commission disposes of hundreds of flammable product cases annually by means of informal proceedings and settlements compared to a handful by means of formal adjudicatory processes. The same may be said for the U.S. Department of Agriculture in the case of adulterated foods and unsanitary processing plants, the Civil Aeronautics Board in complaints against airlines, the National Highway Traffic and Safety Administration, the Food and Drug Administration, the Interstate Commerce Commission regarding the regulation of motor carriers; and many other agencies and matters. Nor can these be passed off as trivial or inconsequential

cases. Matters resolved through informal proceedings are as important as those handled formally, frequently more so, especially when one considers the volume involved. It is no exaggeration to say that the consequences of informal proceedings directly and materially affect the life and limb of every American.

To exclude the CPA from directly intervening in such informal proceedings in behalf of the consumers' interests may well constitute a dereliction of Congress' duty to protect the well-being of the citizenry. The time is long overdue for the American consumer to have a forceful and powerful advocate within the Federal Government. An agency whose sole mission is to protect the consumer's right to fair treatment in the marketplace is sorely needed. With the two amendments to H.R. 10835 that I have outlined above Congress will have taken a long step toward achieving this end.

GILBERT GUDE.

ADDITIONAL VIEWS OF HON. JOHN H. BUCHANAN

Those members who feel there is a need at the federal level of government for a consumer protection agency could well applaud the House Government Operations Committee and the Subcommittee chaired by our distinguished Chairman for the quality of the legislation to create such an agency which H.R. 10835 represents.

This, in my judgment, is a much tighter, cleaner bill than that reported out by this same committee last year.

I do, however, share the philosophies of my colleagues, Mr. Fuqua and Mr. Erlenborn, in challenging certain powers given to the Consumer Protection Agency in this bill. As they point out in Supplementary Views which I have joined in signing, the adversary advocacy approach in the current bill gives the CPA a "super agency" status which could be expected to result in disruption of governmental processes as well as actions of questionable benefit to consumers.

I support the thrust of my colleagues' Supplementary Views and particularly join in their challenge to the granting to the Consumer Protection Agency of such broad powers to intervene as a party in the courts and in the proceedings of their agencies. It is my profound hope, therefore, that the Members of the House will support a floor amendment substituting an *amicus curiae*, or "Friend of the Consumer" approach for such broad intervention powers for this Agency.

In addition to the above reservations, however, I also feel compelled to raise the question as to whether there is a real need for a specialized consumer agency at the federal level of government.

We are all consumers. Many of us are also taxpayers and are and must be wage earners. All of us have some interest in the quality of the physical environment in which we live. In addition to overlapping in many instances, each of these interests is a component of the public interest which the various government departments and agencies have all been charged by the Congress to protect.

With this bill, however, we see the elevation of a single interest over all other interests and I am greatly concerned that this will create distortions which serve the people and the public interest poorly rather than well.

If, as this bill would empower it to do, the Consumer Protection Agency should decide to take the Environmental Protection Agency to court over the difficulties, for example, of plastic meat packaging trays, and if the court should rule with the Consumer agency, many Americans might have a better view of their meats, but a worse view of everything else because of the added air pollution caused by burning these non-biodegradable trays.

In the growing area of ecological concern, furthermore, it is easy to imagine countless incidents of similarly conflicting interests because that which brings the lowest prices in the market place is not necessarily that which protects the environment.

With this bill, we are also faced with the intriguing prospect of the government taking itself to court to decide which agency is best serving the public interest and I am more than a little concerned at the chaos and confusion which may well ensue. I am also fearful that the intervention power would result in the transferral to the federal judiciary of decisions heretofore vested in the Congress and through it to specialized departments and regulatory agencies.

As indicated above, the Congress has vested in specific departments and regulatory agencies the responsibility for protection of particular areas of the public interest including, but not limited to, the consumer interest. Such departments and agencies have developed over the years substantial experience and expertise in their own fields. Now they could be challenged within the government itself by an agency representing a special interest and their authority ultimately transferred to the federal judiciary.

If the record of the federal judiciary toward the improvement of our educational institutions is any indication of what will be the consequence of federal judges making final decisions in other areas where they have no expertise, may God save the consumer from the consequences of this consumer protection legislation.

Indeed, one could reasonably challenge whether consumers need another bureaucracy to save them from the failings of the existing federal bureaucracy or whether a paternalistic government needs a new group of bureaucrats to save the people from themselves. It may be well to point out, furthermore, that in addition to the consumer responsibilities of the various existing departments and agencies, there has already been established a Consumer Protection Bureau in the Federal Trade Commission.

In this country, the entire government exists to serve the people and the public interest. If we need a Consumer Protection Agency, perhaps we also need a Taxpayer Protection Agency. What the people need most, however, may be less, not more, bureaucracy and a thorough-going reform of the existing government rather than further additions to its powers and its ranks.

JOHN H. BUCHANAN.







